

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2006

Coram :

THE HONOURABLE MR.JUSTICE K. RAVIRAJA PANDIAN

Writ Petition No.15977 of 1998

R.K.Ramasamy

Petitioner

v.

The District Collector,
Karur District, Karur.

Respondent

Writ petition filed under Article 226 of the Constitution of India for the issue of writ of certiorarified mandamus calling for the records of the respondent relating to the order passed in Na. Ka. No.D.175/98 dated 06.07.1998 and quash the same and consequently direct the respondent to refund the amount of Rs.1,03,000/- collected towards fine in respect of 3 vehicles bearing registration No.TN-38-0833, TN-41-C-3276 and TN-39-C-8181 and for the cost of minerals and seigniorage fee with interest.

For petitioner : Mr.V.Sanjeevi

For respondent : Mr.R.Thirugnanam,
Special Government Pleader

ORDER

The petitioner is seeking for the issuance of writ of certiorarified mandamus to call for the records of the respondent relating to the order passed in Na. Ka. No.D.175/98 dated 06.07.1998 and quash the same and consequently direct the respondent to refund the amount of Rs.1,03,000/- collected towards fine in respect of the three vehicles bearing registration Nos.TN-38-0833, TN-41-C-3276 and TN-39-C-8181 and for the cost of minerals and seigniorage fee with interest.

2. The facts of the case go as follows : The petitioner was granted lease to quarry sand from the land in S.F. No.1 in Mayanur village, Kulithalai taluk, Karur District, measuring an extent of 25.00.0 hectares. On 13.11.1997, the Assistant Director of Geology and Mining, Trichirappalli issued

transport permits to the petitioner for the purpose of transporting sand with effect from 13.11.1997 to 28.11.1997. The total transport permits issued were 1500. On the basis of the bulk transport permits issued by the Assistant Director of Geology and Mining, Transport permits for carrying sand to one trailer and two lorries bearing registration numbers TN-38-0833, TN-41-C-3276 and TN-39-C-8181 were issued. Pursuant to the permits issued to the trailer and as per the endorsement made in the transport permits, the said trailer started its departure at 10.40 am on 28.11.1997 and it could reach Coimbatore on 29.11.1997 at 11.00 am. In respect of the lorry bearing registration number TN-41-C-3276, the permit was issued at 08.30 pm on 28.11.1997 and as per the endorsement made in the transport permit, the said lorry could reach Coimbatore at 08.00 am on 29.11.1997. Similarly, on 28.11.1997 the despatch slip in respect of lorry bearing registration number TN 39-C-8181 was issued for departure from quarry site at 09.45 pm on 28.11.1997 and therefore, the lorry could reach Coimbatore at 09.30 am on 29.11.1997. When the vehicles were proceeding towards Coimbatore, they were detained by the officials of the respondent in spite of the fact that the vehicles carried necessary permits for transportation of the mineral. On adjudication, the respondents officials imposed a fine of Rs.61,800/-, Rs.20,600/-, and Rs.20,600/- in respect of the three vehicles and on such payment, the vehicles were released. The fine amounts represent the cost of mineral and seigniorage fee as well.

3. The petitioner, not satisfied with the reasoning given for the collection of the fine amount, sent a representation to the respondent dated 02.12.1997 to refund the said amount. As nothing was forthcoming, the petitioner filed a writ petition in WP. No.3012 of 1998 seeking for the issuance of writ of mandamus directing the respondents to hold an enquiry and to pass orders for refunding the amount of Rs.1,03,000/- collected towards fine in respect of the above said three vehicles. This Court, by order dated 08.05.1998 directed the respondent to consider the representation of the petitioner and pass orders within one month from the date of production of a copy of that order. After the receipt of the copy of the order, the petitioner submitted a representation with a copy of the order of this Court dated 08.05.1998 before the respondent. The respondent, accordingly, considered the representation of the petitioner and rejected his request by his order dated 06.07.1998. The correctness of that order is canvassed in this writ petition.

4. Learned counsel for the petitioner very strenuously contended that the order dated 06.07.1998 is passed without hearing the petitioner and thus a product of violation of principles of natural justice, cannot be legally sustained and it has to be quashed.

5. Heard the learned counsel for the petitioner and perused the materials available on record. The respondent has filed a counter affidavit.

6. This writ petition, I am of the view, has been filed in a very innocuous manner. It is an admitted case that for violation of the Tamil Nadu Minor Mineral Concession Rules in transporting minerals, an order imposing penalty has been passed in respect of three vehicles in a sum of Rs.61,800/-. Rs.20,600/-, and Rs.20,600/-, totalling to Rs.1,03,000/-. That is a quasi judicial order passed for violation of the Rules. Statute provides for an appeal and a further appeal to the Government. If the petitioner is aggrieved by that order, he ought to have filed an appeal against that order. It is strange that the petitioner filed a representation before the respondent to refund the amount, which has been imposed in performance of the quasi judicial function. Nowhere, in the Act or Rules, submitting a representation is contemplated as one of the procedures for challenging a quasi judicial order. The petitioner, after sending the representation, has filed a writ petition seeking for the relief of issuance of writ of mandamus directing the respondent to consider the said representation and obtained a direction from this Court to the respondent to consider the representation. The earlier order made in writ petition No.3012 of 1998 is not made available for the scrutiny of this Court. However, in paragraph 5 of affidavit it is stated that the Honourable Court was pleased to direct the respondent to consider and pass orders within one month from the date of production of a copy of this order. That would mean that this Court has given a direction to the respondent to consider the representation of the petitioner dated 02.12.1997 sent against the imposition of penalty, to be considered and orders be passed thereon. It is an admitted fact that pursuant to the said order of the Court on 08.05.1998 the petitioner also gave another representation, which has also been taken into consideration when the respondent passed the order rejecting the request of the petition, by order dated 06.07.1998, which is now challenged in this writ petition. Here again, this order is an appealable order before the appellate authority.

7. This is not the only ground on which the petitioner is non suited in the writ petition. As seen from the order impugned in the writ petition, there are number of factual disputes as to the tampering of transport permits and repeated transportation of sand under one and the same despatch slip. As per the appendix attached to the Tamil Nadu Minor Mineral Concession Rules, the bulk permits and the facsimile despatch slips would be issued by the respondent authorities, and the particulars in the slips have to be filled up by the lessees only. So many details as to the name of the mineral, quantity thereof, mode of transport, validity period, time at which the vehicle left the quarry and the

approximate time at which the vehicle may reach the place of destination, are all to be filled by the petitioner himself. Thus the despatch slip is emanated from the petitioner. The issue relating to the particulars of the despatch slip cannot be decided by the Court, as the same are disputed facts. In a writ petition, the correctness of the decision making process alone can be adjudicated and not the decision itself.

8. As already stated, the grievance of the petitioner is that the petitioner has not been given any opportunity. That was not the case of the petitioner when the petitioner approached this Court on the earlier occasion. His request in the earlier writ petition was only for a direction to the respondent to consider his representation already sent on 02.12.1997. According to the petitioner, that request has been granted by this Court. In addition to that representation, a further representation dated 08.05.1998 sent by the petitioner has also been taken on record by the respondent and has been considered. In such circumstances, having regard to the direction issued by this Court in writ petition No.3012 of 1998 and also to Rule 36A, which only provides that the charge should be made after giving notice, I am of the view that there is no mandatory provision for giving a personal hearing. Only the Wednesbury's principle of reasonableness have to be followed. The earlier order by which fine has been imposed is an adjudicated order. This is not in dispute. Here, in the present case, the petitioner has challenged the order by which the respondent has considered the representations of the petitioner, as directed by this Court in the earlier writ petition. It is seen from the impugned order that all the objections raised by the petitioner in his representations dated 02.12.1997 and 08.05.1998 have been considered by the respondent and orders have been passed thereon.

9. In this regard an useful reference can be drawn to the decision of the Supreme Court in the case of Transmission Corporation of A.P. Ltd. v. M/s. Sri Rama Krishna Rice Mill, 2006-3- LW 332, wherein it has been held:

"The parameters of the principles of natural justice cannot be covered by any straight-jacket formula. It would vary depending upon the circumstances involved. What would be a reasonable opportunity would also depend upon fact situation."

Keeping in mind the above principle, I am of the view that the Wednesbury's principles of reasonableness has been complied with in this case. Hence, I do not find any illegality or irregularity in the order impugned so as to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

10. As this writ petition has not been decided on the merits, it is open to the petitioner, if he is so advised to file an appeal against the order impugned in this writ petition, within ten days from the date of receipt of the order copy.

11. With this observation, the writ petition is dismissed. No costs.

mf

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

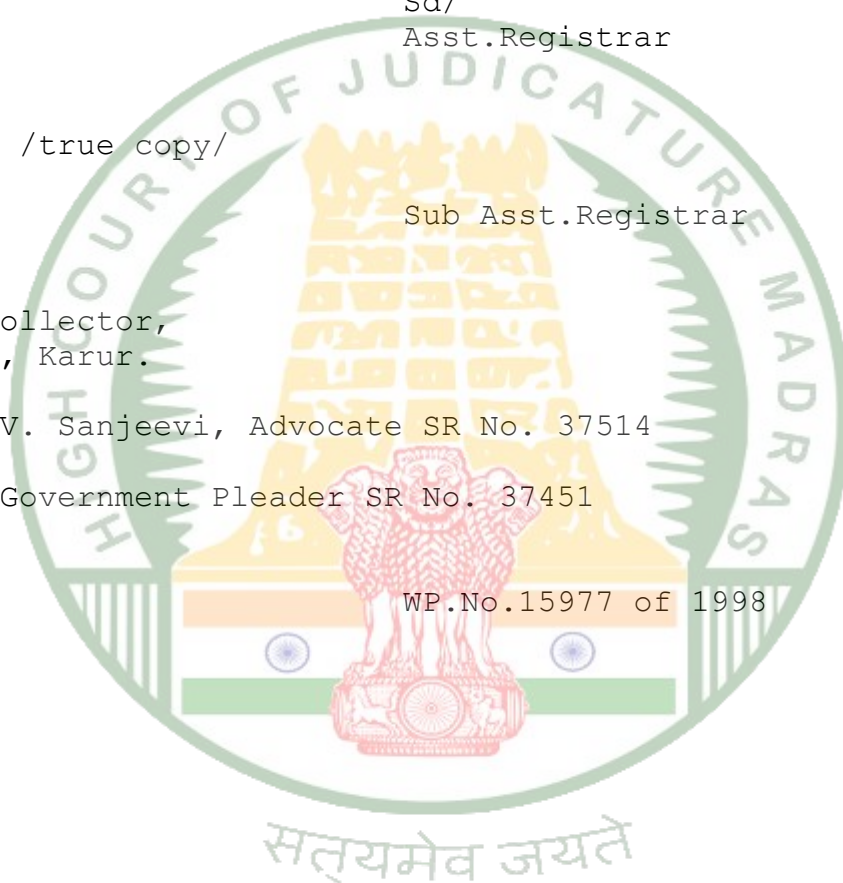
The District Collector,
Karur District, Karur.

+ 1 cc to Mr. V. Sanjeevi, Advocate SR No. 37514

+ 1 cc to The Government Pleader SR No. 37451

NTK (CO)
SR/31.8.2006

WP.No.15977 of 1998



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